

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement, in particular, Rule 32 when Electrician B. G. Murray was unjustly dismissed from service on February 26, 1982 at Waycross, Georgia.
2. That accordingly, the Seaboard Coast Line Railroad Company compensate Electrician B. G. Murray in the amount of eight (8) hours pay per day at the pro rata rate for the period commencing February 26, 1982 and ending the day he is reinstated to his position as an Electrician at Waycross, Georgia, both dates inclusive. In addition Electrician B. G. Murray be allowed all other benefits that would accrue to his position.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, Electrician B. G. Murray, was employed by Carrier for approximately 18 years until his dismissal on February 26, 1982. On October 24, 1980, Claimant's wife telephoned Carrier and advised Carrier that she was in possession of company tools and items left in her home by the Claimant. On the afternoon of October 24, 1980, police officials picked up items allegedly belonging to the Carrier at Ms. Murray's home.

Carrier charged Claimant with theft. Claimant was held out of service pending the outcome of the investigation. Claimant was dismissed following the February 4, 1982, investigation on the property having been found guilty of violating Rule 10 of the Seaboard Coast Line Railroad Company Rules and Regulations of Mechanical Department. Rule 10 states:

"Tools must not be taken from locomotives or cars, or from the shops, unless by permission of the persons having them in charge."

The Organization's position is that Claimant was disciplined without a fair hearing in violation of Rule 32 when he was held out of service pending the investigation. Rule 32 states:

"No employee shall be disciplined without a fair hearing by a designated officer of the Company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing such employee and the local chairman will be apprised in writing of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and be represented by the duly authorized representative of System Federation No. 42."

The Organization also argues that the Claimant was unjustly dismissed from service because the Carrier failed to sustain its burden of proof as none of the Carrier's witnesses testified that they saw the Claimant remove any of the items in question from the Carrier's property.

The Carrier's position is that the testimony of Police Lieutenant J. M. O'Briant, together with the testimony of Special Agent W. T. Moore and Claimant's ex-wife during the investigation, clearly established that Claimant had company property in his possession at his home in violation of Rules 10 and 12. Additionally, Carrier contends that the suspension of Claimant pending the outcome of the hearing was not a violation of Rule 32 as that rule provides that "... suspension in a proper case pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

After a thorough examination of the record in this case, this Board finds that the Carrier did not violate Rule 32 by suspending the Claimant pending the outcome of the investigation. This Board further finds that there is substantial evidence to sustain the finding of guilt.

As the test of Rule 32 states, suspension, pending a hearing is allowed in certain cases. The Carrier is not required to allow an employee suspected of theft to work on its premises. The Carrier's right to suspend an employee suspected of theft pending a hearing has been upheld in numerous cases. For example, in Second Division Award 8717, the Board stated:

"... there is no doubt in the Board's mind that theft is a major offense and further that the retention of an employee suspected of theft pending trial would be 'detrimental' to the Carrier's interests."

While the record contains evidence that the Claimant's ex-wife had a history of causing trouble for the Claimant at work, the Board finds substantial evidence to sustain the finding of guilt. Carrier's Police Lieutenant J. M. O'Briant testified that one of the tools which was removed from Ms. Murray's home was marked "Property of SCL RR" and certain others also had Carrier's markings. Carrier's Special Agent Moore corroborated O'Briant's testimony.

This is a discipline case. It is well settled that a disciplinary penalty imposed may be challenged before this Board only on the grounds that it was arbitrary, capricious, excessive, or an abuse of managerial discretion. (See Second Division Awards 1323, 1575, 2996, and 3081.) As stated by the Board in Second Division Award 4401:

"From its inception this Division has stated that in disciplinary cases, it is without authority to substitute its judgment for that of the carrier unless the employees affected have been discriminated against or treated in an arbitrary or capricious manner."

Although there was no direct evidence of the theft, the circumstantial evidence was overwhelming. The hearing officer has the right to determine the credibility of the witnesses; and in spite of the fact of the bad relationship between Claimant and his former wife, the hearing officer has decided to find the testimony of the officers and the former wife to be more credible than the Claimant's. This Board will not set that aside.

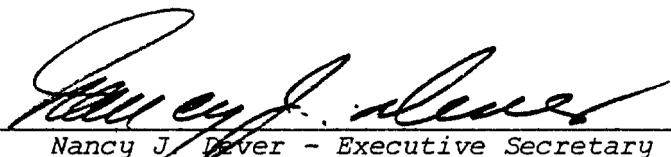
The discipline assessed against the Claimant was not arbitrary, capricious, or excessive in view of the seriousness of the offense of theft.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1984